SUPREME COURT

OF THE

STATE OF CONNECTICUT

WATERBURY JD

S.C. _____

LAFFERTY, ERICA Et Al

V.

JONES, ALEX EMRIC Et Al

SHERLACH, WILLIAM Et Al

V.

JONES, ALEX EMRIC Et Al

SHERLACH, WILLIAM
V.

JONES, ALEX EMRIC Et Al

THE PETITIONER-APPLICANTS' APPLICATION FOR CERTIFICATION TO FILE PUBLIC INTEREST APPEAL

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QUESTION OF LAW FOR APPEAL

Whether a claim of judicial bias raises "unusual circumstances creating an intolerably high risk of [actual bias]" thereby establishing a due process violation, State v. Rizzo, 303 Conn. 71, 116 (2011), when a judge conditions a litigant's ability to defend a civil action on a shifting threshold requirement and contradictory rulings; and employs an arbitrary and capricious decision making process that prohibits evidentiary hearings and a meaningful opportunity to be heard?

THE NATURE OF THE APPLICATION

Pursuant to Conn. Gen. Stat. § 52-265a and Practice Book § 83-1, the petitioner-applicants, Alex Jones; Free Speech Systems, LLC; Infowars, LLC; Infowars Health, LLC; and Prison Planet TV, LLC respectfully request certification to file a Public Interest Appeal from the denial of their motion to disqualify the trial judge. Denial of this motion by the very judge they sought to recuse violated petitioners' right to due process, which is a matter of substantial public interest and delay will work a substantial injustice.

This appeal arises from the petitioners' defense against a lawsuit designed to limit their public participation in the political process. In late 2015, two of the named plaintiffs in the lawsuits against the petitioners publicly endorsed Hillary Clinton—the ultimate loser of the 2016 Presidential Election. It is widely believed that the petitioners played a pivotal role in Ms. Clinton's defeat. In response, these plaintiffs shifted their political battle to the court of public opinion, publishing a variety of open letters and blog posts seeking to "cancel" the petitioners. After failing again to garner any support to achieve their political goals, plaintiffs then began unilaterally pushing their political agenda in the Connecticut courts.

Plaintiffs filed three strategic lawsuits targeting the petitioners for daring to question the official politicized narrative of the Sandy Hook school shooting: *Erica Lafferty, et al. v. Alex Emric Jones, et al.*, docket, X06-UWY-CV-18-6046436-S; *William Sherlach v. Alex Emric Jones, et al.*, docket, X06-UWY-CV-18-6046437-S; and *William Sherlach, et al. v. Alex Emric Jones, et al.*, docket X06-UWY-CV-18-6046438-S, are consolidated cases pending at Waterbury JD on the Complex Litigation Docket. **A-33**.

At the time of such questioning, it was entirely reasonable to do so. There were details in the mainstream press coverage of the event that were not explained. The Defendants relied on experts who concurred that the official narrative was deficient. For example, the FBI official crime statistics for 2012 showed that Newtown law enforcement reported 0 murders.[1] It is a strange event, indeed, when the official narrative is deficient, but later holds up to scrutiny. Meanwhile, the plaintiffs, their unknown political benefactors, and their law firm have been given free reign in this case by Judge Bellis .[2]

The pending petition raises a denial of due process claim in violation of petitioners' constitutional right to due process under the Fourteenth Amendment of the United States Constitution. Specifically, the motion to disqualify Judge Bellis alleges that she (1) conditioned the petitioners' right to an anti-SLAPP motion in a First Amendment

[1] See https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/8tabledatadecpdf/table-8-state-cuts/table_8_offenses_known_to_law_enforcement_by_connecticut_by_city_2012.xls . Even though, apparently, the Sandy Hook deaths were reported by the Connecticut State Police, there is no reason given why the Newton Police would not, themselves, have reported it. See https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/11tabledatadecpdf/table-11-state-cuts/table_11_offenses_known_to_law_enforcement_by_connecticut_by_state_tribal_and_other_agencies_2012.xls (listing 36 murders/nonnegligent manslaughters reported by the Connecticut State Police).

[2] In fact, discovery closes in one month, the plaintiffs are seeking dispositive sanctions for purported discovery violations, and Judge Bellis has yet to decide Defendants' motion to strike. She is poised to award potentially dispositive sanctions to plaintiffs on claims she should find have no basis in law.

case on a shifting threshold requirement; (2) made contradictory rulings regarding that threshold; (3) incorporated alternative bases to deny the petitioners' motion without an evidentiary hearing or meaningful opportunity to be heard; and (4) then following the defendants' appeal of that ruling continued to employ that arbitrary and capricious decision making process in subsequent rulings. **A-34**. This resulted in excessive expenses to defend against an ever-shifting legal standard and currently jeopardizes petitioners' ability to defend these matters. This is clear evidence of judicial bias mandating recusal, and petitioners' injury occurred when the very jurist they sought to disqualify stood in judgment of her own conduct. **A-550**.

BRIEF HISTORY AND STATEMENT OF THE CASE

Petitioners have endured over three years of attempting to comply with discovery orders to be allowed the basic right to defend against these matters. Plaintiffs' complaints alleged claims typical of suits designed to limit participation in public discourse with a principal purpose of ending public debate concerning a specific issue.[3]

[3] The plaintiffs' complaint alleges counts of invasion of privacy by false light, defamation and defamation per se, intentional infliction of emotional distress, and negligent infliction of emotional distress, civil conspiracy, and violations of the Connecticut Unfair Trade Practices Act. In 2007, the Connecticut Office of Legislative Research Chief Attorney George Coppolo defined Strategic Lawsuits Against Public Participation (SLAPP) lawsuits as,

> civil complaints . . .in which the alleged injury was the result of . . . free speech activities protected by the First Amendment of the U.S. Constitution. . . [and] are often brought by . . . entities against individuals . . . that oppose them on public issues. *Typically, SLAPPs are based on ordinary civil tort claims such as defamation, conspiracy, and interference with prospective economic advantage*. . . even though the lawsuits are legally without merit, they nonetheless often achieve their principal purpose of chilling or ending public debate on specific issues. Defending a SLAPP can require substantial money, time, and legal resources and thus can divert the defendant's attention away from the public issue. In addition, critics claim that a SLAPP also warns others that they can be sued also.

George Coppolo, Chief Attorney Office of Legislative Research Report, "SLAPP Lawsuits 2007-R-0516" (August 28, 2007), available at https://www.cga.ct.gov/2007/rpt/2007-R-0516.htm (last visited November 10, 2021) (emphasis added).

In November 2018, the petitioners filed special motions to dismiss the complaints pursuant to the anti-SLAPP statute—General Statutes § 52-196a (b). **A-4**. On December 17, 2018, without defining what the terms entailed, the trial court ordered petitioners produce "specific and limited" discovery in order for the petitioners to be allowed to pursue the special motion to dismiss. **A-66**. The trial court initially ordered the petitioners to comply with the court's discovery orders by February 23, 2019. **A-66**. Petitioners failed to meet this deadline. The court indicated that petitioners' ability to have their special motion to dismiss heard depended on complying with the court's orders. **A-66**. At petitioners' request, the trial court extended the discovery deadline to March 20, 2019. **A-66**. Petitioners subsequent request for another extension was denied and plaintiffs requested sanctions against the petitioners. The court delayed ruling on the request for sanctions until April 10, 2019.

On April 10, 2019, petitioners argued that they were in substantial compliance with the court's discovery orders. **A-69**. The court agreed and held that production to that point was sufficient to allow petitioners to pursue the merits of their special motion to dismiss. **A-70**. The court reaffirmed this on May 7, 2019—acknowledging that it had previously stated "a few times" that the petitioners were in substantial enough compliance with the court's discovery orders to pursue their special motion to dismiss—(**A-74**) and on June 5, 2019—stating the petitioners had substantially complied with the discovery orders such that they could pursue their special motion to dismiss. **A-78**.

Interspliced between the court finding substantial compliance were a series of unrelated issues. On April 10, 2019 an issue arose with regard to a signature on an affidavit. **A-70**. On May 7, 2019 the court heard and overruled argument requiring

whether petitioners were required to disclose draft interrogatories. **A-75**. Finally, on June 14, 2019, an issue arose with regard to a broadcast by one of the petitioners. **A-78**. For each of these unrelated issues, the issue of whether sanctions should enter against petitioners was raised. For each issue, save the broadcast, the court did not enter sanctions. However, the court referenced all these issues in the order denying petitioners' special motion to dismiss. The affidavit filed along with the petitioners' motion to disqualify Judge Bellis details these specific issues in detail. **A-69 to 84**.

At the first hearing following the June 14th broadcast, on June 18, 2019, Judge Bellis sanctioned the petitioners by denying them the ability to pursue their special motion to dismiss. **A-83**. In making this ruling, the court referenced all the aforementioned issues. The court indicated that, despite referencing all these issues in its ruling, it was putting aside all but the broadcast and the discovery issues in imposing sanctions. **A-83**. The court did not reference any of its multiple prior holdings that the petitioners were in substantial enough compliance with the court's discovery orders to allow them to pursue the merits of the special motion to dismiss. This ruling came despite a request from plaintiffs for a briefing schedule and hearing regarding the broadcast. **A-81**. Rather the court directed both parties to provide extemporaneous argument, indicating that prior to this argument the court performed its own research and was prepared to rule. **A-81**. Plaintiffs were allowed to argue uninterrupted. **A-81 to 82**. Petitioners were not. **A-82**. In her ruling, Judge Bellis specifically accused the petitioners of engaging in "indefensible, unconscionable, despicable, and possibly criminal behavior;" of stating "I am going to kill" despite admitting "the transcript doesn't reflect this," and of performing "an intentional, calculated act of rage." **A-84**

Following this order, on June 21, 2019, the court acknowledged being informed by the FBI of a threat that an unknown third party published in the comment section of a news article regarding the sanction order published on one of petitioners' websites. **A-85**. No further information involving this threat was provided. Petitioners appealed the sanction order. **A-86**. The appeal was unsuccessful and the matter returned to the trial court. **A-86**. Following the return to the trial court, Judge Bellis' conduct demonstrated a continued actual bias against the petitioners through a series of sanctions orders and oppressive discovery rulings. This bias manifest most prominently in Judge Bellis' persistent refusal to provide them due process via meaningful hearings and an opportunity to be heard in matters arising before the court. **A-86 to 90**. Accordingly, the petitioners sought to disqualify her. **A-34**.

On October 20, 2021 petitioners filed a motion to disqualify Judge Bellis. **A-34**. On November 4, 2021, Judge Bellis herself denied the petitioners' motion. **A-550**. After denying a request for an evidentiary hearing, Judge Bellis reasoned that petitioners failed to meet the burden of establishing the appearance of judicial bias. The court based this ruling on the petitioners' reliance on "transcripts and orders contained in the official court file" which the court summarily concluded reduced the petitioners' due process claims to "vague and unverified assertions of opinions, speculation, and conjecture [which] cannot support a motion to recuse." **A-550**.

ARGUMENT

I. DUE PROCESS REQUIRES A FAIR TRIAL IN A FAIR TRIBUNAL BEFORE A JUDGE WITH NO BIAS AGAINST THE DEFENDANT.

"[A]ny party to an action who is aggrieved by an order or decision of the Superior Court in an action which involves a matter of substantial public interest and in which

delay may work a substantial injustice, may appeal . . .from the order or decision to the Supreme Court within two weeks from the date of the issuance of the order or decision Conn. Gen. Stat. § 52-265a; *see also* Practice Book § 83-1 (same). “It is well established ... that appeals from interlocutory orders may be taken pursuant to §265a.” *Foley v. State of Elections Enforcement Comm'n*, 297 Conn. 764, 770 n. 2 (2010).

A. This is a matter of substantial public interest for which delay may work a substantial injustice

The Court has identified relevant factors as to “substantial public interest”: 1) whether the order affects an important legal principle or public policy. *See*, *e.g.*, *Metro. Life Ins. Co. v. Aetna Gas. & Sur. Co.*, 249 Conn. 36,48 (1999); 2) Whether the order affects the public interest at-large, as opposed “to only the parties. *See, e.g., State v. Fielding*, 296 Conn. 26, 35 n.7 (2010); 3) Whether the order accounts for the interests of the public. *See*, *id*.; and 4) Whether the “special circumstances of this case fit within the substantive ambit of General Statutes§ 52-265a (a)[.]” *State v. Ayala*, 222 Conn. 331,341 (1992). These factors are all present and satisfied in this case.

First, Judge Bellis’ order denying petitioner’s motion to disqualify herself on the basis of bias violates a fundamental constitutionally protected right to due process. Second, an interlocutory appeal to the state's highest tribunal will serve the interests of any civil litigant seeking to recuse a judge with bias that is presiding over a matter. Third, the very basis of a judicial disqualification motion considers preserving public perception of the integrity of the judiciary. Having the very judge that is the subject of a motion to disqualify stand in judgment over that motion shakes public confidence of in impartial judicial branch. Finally, the circumstances of this case warrant interlocutory

special interest review. The Connecticut Supreme Court has specifically suggested that while rare, unusual circumstances creating an intolerably high risk of actual bias could support the conclusion that a judicial bias claim states a due process violation. Given the plaintiffs entwinement of the judicial process with their own failed political agenda, the circumstances of this case make it fit within the substantive ambit of General Statutes § 52-265a.

B. DUE PROCESS REQUIRES A FAIR TRIAL IN A FAIR TRIBUNAL BEFORE A JUDGE WITH NO BIAS

In State v. Rizzo, the Connecticut Supreme Court suggested that a judicial bias claim could rise to the level of a "due process violation[] only in egregious cases involving actual bias or unusual circumstances creating an intolerably high risk thereof." 303 Conn. 71, 116 (2011). In that case a criminal defendant argued a judge should have recused himself due to pretrial involvement in the case. *Id*. In dismissing this claim, the Court reasoned nonetheless that certain instances of judicial bias would rise to the level of a due process violation. *Id.* at 117. The Court went on to review a series of United States Supreme Court cases that exhibited "unusual circumstances" creating a risk of bias necessitating recusal. *Id.* at 116-17.

In In re Murchison, the United States Supreme Court held that when a judge acts in both an accusatory and trier-of-fact role over the same core of operative facts it creates an intolerably high risk of actual bias that undermines due process. 349 U.S. 133, 137 (1955). That case involved a Michigan law that authorized a judge to act as a one-person grand jury. *Id*. at 135-36. There, a judge acting in that capacity, indicted a defendant and then subsequently acted as the trier-of-fact in a trial on that indictment.

Id. at 135-36. The Supreme Court reasoned that "no [person] can be a judge in [their] own case and no [person] is permitted to try cases [in which they have] an interest." *Id.*

> Every procedure which would offer a possible temptation to the average [person] as a judge not to hold the balance nice, clear, and true. . . denies. . . due process of law . . . Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must satisfy the appearance of justice.'

Id.

Similarly, in Maybury v. Pennsylvania the Supreme Court held that when a judge "becomes embroiled in a running, bitter controversy" with a litigant it can create an unusual circumstance resulting in an intolerably high risk of judicial bias, necessitating another jurist sit in judgment of that litigant. 400 U.S. 455, 465-66 (1971). There, the controversy involved mere words, albeit extreme when uttered in "a hallowed place of quiet dignity" such as a courtroom and resulted in the litigant being held in contempt by the offended judge.[4] Id. at 455-56. The Court reasoned that when a "judge. . . becomes embroiled in a running, bitter controversy," she is not "likely to maintain that calm detachment necessary for fair adjudication." Id. at 465. The Court then reiterated its holding in In re Murchison that when a judge becomes part of the "accusatory process [s]he 'cannot be, in the very nature of things, wholly disinterested. . . 'Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer.'" Id. Ultimately, the Court again concluded "justice must satisfy the appearance of justice." Id.

[4] Many of the words leveled at the judge in the instant case were highly personal aspersions, even 'fighting words'—'dirty sonofabitch', 'dirty tyrannical old dog,' 'stumbling dog,' and 'fool.' He was charged with running a Spanish Inquisition and told to 'Go to hell' and 'Keep your mouth shut.' Insults of that kind are apt to strike 'at the most vulnerable and human qualities of a judge's temperament.' *Mayberry v. Pennsylvania*, 400 U.S. 455, 466 (1971).

Here, like the judge in In re Murchison, Judge Bellis acted as a one person grand jury during the June 18th hearing. Judge Bellis cast the plaintiffs, albeit unwillingly, in the role of the prosecutor, directing them to present whatever extemporaneous arguments they could conjure up to support the court's predetermined conclusion that sanctions should enter. Unsurprisingly, petitioners cast in the role of defending this grand inquisition were barely permitted to speak. Then, having crafted her record, Judge Bellis indicted the defendants for engaging in an "intentional, calculated act of rage" that she found to be "indefensible, unconscionable, despicable, and possibly criminal behavior" on the basis of evidence "the transcript doesn't reflect." This alone is an unusual enough circumstance creating an intolerably high risk of judicial bias. However, like in Maybury this episode was just part of a running bitter controversy between Judge Bellis and the petitioners. Evidence of this is found in Judge Bellis' willful blindness to the fact that on multiple prior occasions she ruled the petitioners sufficiently complied with the courts discovery orders to pursue the merits of their special motion to dismiss. Judge Bellis' continued animosity towards the petitioners following the appeal of that sanction only underscores the due process violation that occurred when she sat in judgment of her own disqualification motion.

CONCLUSION

Petitioners respectfully ask this court to reverse the judgment below.

Respectfully Submitted,

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CERTIFICATION

The undersigned, on behalf of the Defendants-Applicants, hereby certifies that the Petition and Appendix complies with the provisions of Practice Book §§ 66-3 and 67-2. Undersigned hereby certifies that the foregoing petition complies with the form and font requirements of P.B. § 62-7 & 84-5, and that the font used is Arial12.

This is to further certify that, in accordance with Practice Book §§ 62-7 (g) and (h), true copies of the foregoing were submitted electronically and electronically delivered to the last known email address for council. This also certifies that the foregoing does not include any names and/or personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

/S/NORMAN A. PATTIS/S

CERTIFICATION OF SERVICE

The undersigned, on behalf of the Defendant-Applicant, hereby certifies that a copy of the above was mailed via Fed Ex service as noted, emailed, or electronically delivered on this 12th day of November 2021 to all counsel and pro se parties of record, and to the trial court, and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served including:

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